

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**KENNETH E. DAY,
MICHAEL J. HANSEN, and
CEMAGROUP, LLC,**

Respondents.

ORDER TO SHOW CAUSE

Docket No. SD-13-0021
Docket No. SD-13-0022
Docket No. SD-13-0023

It appears to the Director of the Utah Division of Securities (Director) that Kenneth E. Day (Day), Michael J. Hansen (Hansen), and CEMAGROUP, LLC (CEMA, and, collectively with Day and Hansen, Respondents) have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.* (the Act). Those acts and practices are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over Respondents and the subject matter is appropriate because the Division

alleges that they violated § 61-1-1 (securities fraud) of the Act, and Day violated § 61-1-16 (false statements to the Division) of the Act, while engaged in the offer and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. Day was, at all relevant times, a resident of the state of Utah. According to Day, he was previously licensed in the securities industry as a broker-dealer agent; however, he has not been associated with a firm and/or licensed in the securities industry in recent history. Further, no records exist with the Financial Industry Regulatory Authority or the Division indicating that Day held a securities license at any point. Day also served as a manager and registered agent of Day-ly Fresh Farms, LLC (Day-ly Fresh)¹ during its existence.
3. Hansen was, at all relevant times, a resident of the state of Utah. Hansen has never been licensed in the securities industry in any capacity. Hansen currently serves as a member and registered agent of CEMA.
4. CEMA is a Utah limited liability company that registered with the Utah Division of Corporations on June 21, 2007. As of July 18, 2012, CEMA's status with the Division of Corporations is listed as active and in good standing.

¹ Day-ly Fresh was a Utah-based limited liability company that registered with the Utah Division of Corporations on October 27, 2008. As of January 31, 2011, the entity's status with the Division of Corporations changed to expired.

GENERAL ALLEGATIONS

5. From July to August 2009, Respondents offered and sold securities to an investor, in or from Utah, and collected a total of at least \$75,000.
6. Respondents made material misstatements and omissions in connection with the offer and sale of securities to the investor identified below.
7. The investor lost \$74,000 in principal alone.

INVESTOR L.M.

First Offer and/or Sale of a Security

8. Hansen created CEMA in 2007 for the purpose of providing business development and management consulting services.
9. By 2009, CEMA was interested in acquiring and expanding Day-ly Fresh, a farming company designed to raise produce indoors using hydroponic techniques.
10. To that end, Hansen and CEMA agreed with Day and Day-ly Fresh to obtain funding in the amount of \$30,000,000.
11. L.M. initially came in contact with Respondents through his brother-in-law, Joseph Monson (Monson), who worked as a consultant for Day-ly Fresh in or around June and July 2009.
12. As a consultant for Day-ly Fresh, Monson contacted L.M. in or around June or July 2009 to discuss a possible investment in CEMA and Day-ly Fresh.
13. Monson based much of his conversation with L.M. upon information that he previously received from Hansen.

14. During that conversation, Monson made the following representations with respect to Hansen and CEMA's efforts to advance Day-ly Fresh and its industry²:
- a. CEMA worked closely with the Church of Jesus Christ of Latter-day Saints (LDS Church) and its officials in its efforts to expand the hydroponic business into a humanitarian service;
 - b. Hansen was in contact with President Thomas S. Monson and Elder Dallin H. Oaks of the LDS Church regarding this new hydroponic technology and its potential use in the Church's humanitarian farming efforts throughout the world; and
 - c. Hansen was in regular contact with high ranking LDS Church officials concerning this effort and was making great progress in his partnership efforts with the LDS Church.
15. Based on these representations, as well as the representations made by Respondents in the contract described below, L.M. agreed to invest \$75,000 with Hansen and Day.
16. Related thereto, on July 7, 2009, Day, on behalf of Day-ly Fresh, and Hansen, on behalf of CEMA, prepared and executed a contract entitled "Loan Contract."
17. L.M. received the same contract via email from Hansen on or around July 8, 2009 and executed it the same day.
18. The contract includes the following terms and provisions:

² In an interview with the Division, Monson claimed that any payments he received from Day and/or Hansen came as a result of his consulting services for Day-ly Fresh and not as a result of his solicitation. However, Monson has agreed to repay \$6,000, the amount of his compensation, to the investor and has established a payment plan to do so.

- a. The parties to the agreement are as follows: Day-ly Fresh, CEMA, L.M. and his trust.
 - b. Day-ly Fresh previously entered into a loan agreement with CEMA to fund Day-ly Fresh in the amount of \$30,000,000. The \$75,000 investment from L.M. serves as a loan to cover the costs associated with the \$30,000,000 loan.
 - c. Day-ly Fresh, CEMA and its principals agree to return L.M.'s \$75,000 investment within fifteen banking days.
 - d. Day-ly Fresh, CEMA and its principals will also pay interest in the amount of \$75,000 following the release of funds to Day-ly Fresh.
 - e. Day-ly Fresh also agrees to pay a penalty charge of 25% in the event of a delay.
 - f. Further, Day-ly Fresh reserves the right to pay L.M. any amount over and above the agreed upon amount.
19. On July 9, 2009, L.M. wired \$75,000 to Day's Day-ly Fresh account at JPMorgan Chase Bank.
20. On July 10, 2009, Day-ly Fresh wired \$37,500 of the \$75,000 investment from its account at JPMorgan Chase Bank to Hansen's Wells Fargo account, Opptimus Consulting, LLC (Opptimus Consulting).³
21. Based on a source and use analysis of the Day-ly Fresh account, bank records indicate that

³ Opptimus Consulting was a Utah limited liability company that registered with the Utah Division of Securities on January 31, 2007. As of April 23, 2012, its status with the Division of Corporations is listed as expired. During its existence, Hansen served as the registered agent and sole member of the entity.

Day and/or his wife Debi, the two individuals with signatory authority on the account, used investor funds, excluding the \$37,500 transferred to Hansen, in the following manner:

a. Categorized Expenses:

i.	Entertainment	\$30.75
ii.	Pets	\$64.06
iii.	Fees and Charges	\$88.00
iv.	Personal Care	\$119.46
v.	Home (HOA Fees)	\$213.50
vi.	Miscellaneous ⁴	\$216.70
vii.	Food and Dining	\$264.26
viii.	Health and Fitness	\$300.00
ix.	Cities (South Jordan, Sugar House, Salt Lake City)	\$389.71
x.	Financial (Life Insurance)	\$632.72
xi.	Cash Withdrawals	\$1,363.01
xii.	Bills and Utilities	\$1,918.30
xiii.	Gifts and Donations	\$4,454.45

b. Uncategorized Expenses:

i.	Check to MB Dist.	\$60.00
ii.	Check to Diamond Rental	\$78.71

⁴ Charges for under \$50: Wal-Mart, Kmart, Target, Khols, Lincare Inc., Media One of Utah, and Total Protection.

iii.	Freelife International	\$154.99
iv.	Check to Bolt & Nut	\$239.72
v.	Parlow Investment Properties	\$275.00
vi.	American Express Web Remittance	\$603.44
vii.	Check to Reggie Wilson	\$1,886.08
viii.	Check to Ryan Day ⁵	\$2,857.40
ix.	Check to Altius	\$2,906.98
x.	Chase Epay	\$3,382.76
xi.	Checks to AKD Co. and AKD, Inc. ⁶	\$10,000.00
xii.	Check to Monson ⁷	\$5,000.00.

22. Based on a source and use analysis of the Optimus Consulting account, bank records indicate that Hansen, the sole member and registered agent of the entity, used the funds in the following manner:

a. Categorized Expenses:

i.	Education	\$24.00
ii.	Fees and Charges	\$27.50

⁵ The check did not include a description on the memo line; however, Ryan Day is one of Day's sons.

⁶ AKD, Inc. is a Utah-based corporation that initially registered with the Utah Division of Corporations on August 5, 2003. As of October 26, 2009, the company's status with the Division of Corporations was listed as active and in good standing. Day's son Austin serves as Vice President and Director. His wife Amy serves as President, Director and registered agent, and Bob Mouritsen serves as a Director. While the checks are made out to AKD Co. and AKD Inc., both checks were deposited into the same account at Zions Bank.

⁷ In an interview with the Division, Monson claimed that the \$5,000 payment came from his consulting services. Monson has agreed to repay this amount to the investor and has established a payment plan to do so.

iii.	Pets	\$33.13
iv.	Personal Care	\$268.20
v.	Shopping	\$304.42
vi.	Home (Services, Lawn and Garden, Improvements)	\$315.41
vii.	Midvale City (Fire Department and City Corp)	\$329.70
viii.	Financial (Life Insurance)	\$415.06
ix.	Miscellaneous ⁸	\$570.33
x.	Entertainment	\$725.09
xi.	Health and Fitness	\$870.41
xii.	Bills and Utilities	\$506.56
xiii.	Travel	\$575.22
xiv.	Auto and Transportation	\$592.67
xv.	Food and Dining	\$2,504.81
xvi.	Cash Withdrawals	\$2,931.63

b. Uncategorized Expenses:

i.	Norton Annual Renewal	\$58.75
ii.	Ustc DMV Renewal	\$69.50
iii.	Wowzaa Power	\$98.85

⁸ Charges for under \$50: Wal-Mart, Best Buy, Media One of Utah, Simply Colorado Denver, Sales@invisusdirect CO, Jeremy Store, Midvale Mining Company, Murray Heights, Trade Secret, Red River Fifle Co., King Scoopers, Winzip Computing, Siber Roboform Goodsyn, and UDOT.

iv.	Transfer to Account 3859	\$100.00
v.	USF Box Office	\$104.00
vi.	Asante AZ	\$179.55
vii.	Nuance Communications	\$186.89
viii.	Fishers Creative	\$197.67
ix.	Storageplus-Murray	\$200.00
x.	Check to Andrew Dawes	\$200.00
xi.	Check to Robert Norton for Phone Replacement	\$427.39
xii.	Attm Mtz GA	\$504.84
xiii.	Checks to Chase	\$663.05
xiv.	Check to Monson ⁹	\$1,000.00
xv.	Checks to Swamp Tech	\$2,868.00
xvi.	DDA Transfer to Account 1203	\$9,647.37
xvii.	DDA Transfer to Account 0080	\$10,000.00

Second Offer and/or Sale of a Security

23. Between July 9, 2009 and August 28, 2009, Hansen and L.M. spoke on the telephone several times, discussing the status of L.M.'s investment.
24. During one of those conversations, Hansen stated that L.M.'s investment was being used: 1) to secure a larger loan from a financial institution, and 2) to keep the hydroponic project and

⁹ Monson claims that this payment came from consulting fees; however, he has agreed to repay this money to L.M.

efforts afloat until the approval and release of funds to CEMA and Day-ly Fresh.

25. However, by the end of August, Hansen and Day had missed the fifteen day payout requirement, as stated in their contract with L.M. At that point, L.M. began requesting repayment of his investment.
26. On or around August 28, 2009, in light of L.M.'s requests for repayment, Hansen, as Chief Executive Officer of CEMA, sent a letter to L.M. via email that modified the terms of their arrangement.
27. In exchange for additional time to repay the investment, Hansen offered the following terms to L.M.:
 - a. A cash payment of \$8,750.00 upon completion of the contract funding; and
 - b. A payment of \$66,666.67 per month for a period of twenty-four months. This payment would come from CEMA placing \$160,000, the balance of what is owed to L.M. under the previous contract, in a private funding contract in Hong Kong. That contract would start sixty days from the date of contract funding and pay out ten times the principal amount in a twenty-four month period.
28. Based on these representations, L.M. left his \$75,000 investment with CEMA and Day-ly Fresh.
29. To date, L.M. has received a return of \$1,000, leaving \$74,000 in principal alone currently outstanding.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act (First Offer and/or Sale of a Security)

30. The Division incorporates and re-alleges paragraphs 1 through 29.
31. The investment opportunity offered and sold by Respondents is a security under § 61-1-13 of the Act.
32. In connection with the first offer and sale of a security to investor L.M., Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
 - a. L.M.'s funds would be used to cover the cost of the funding agreement between CEMA and Day-ly Fresh, when in fact, the funds were used for other purposes, including personal use.
33. In connection with the offer and sale of a security to investor L.M., Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:
 - a. In 2005, Hansen filed for Chapter 13 bankruptcy jointly with Kristine Hansen. The debtors were not discharged until 2010;¹⁰ and
 - b. Some or all of the information typically provided in an offering circular or prospectus regarding Respondents or an investment in CEMA and Day-ly Fresh, such as:
 - i. Financial statements;
 - ii. Risk factors;

- iii. Whether the investment was a registered security or exempt from registration;
and
- iv. Whether Respondents were licensed to sell securities.

**Securities Fraud under § 61-1-1 of the Act
(Second Offer and/or Sale of a Security)**

- 34. The Division incorporates and re-alleges paragraphs 1 through 29.
- 35. The investment opportunity offered and sold by Hansen, on behalf of CEMA, is a security under § 61-1-13 of the Act.
- 36. In connection with the offer and sale of a security to investor L.M., Hansen, directly or indirectly, made false statements, including, but not limited to, the following:
 - a. CEMA would use L.M.'s funds to secure a larger loan from a financial institution and to keep the hydroponic project afloat until the approval and release of funds to CEMA and Day-ly Fresh, when in fact, the funds were used for other purposes, including personal use.
- 37. In connection with the offer and sale of a security to investor L.M., Hansen, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:
 - a. In 2005, Hansen filed for Chapter 13 bankruptcy jointly with Kristine Hansen. The debtors were not discharged until 2010;¹¹

¹⁰ In re Hansen, Case No. 05-23826 (Bankr. D. Utah 2005).

¹¹ In re Hansen, Case No. 05-23826 (Bankr. D. Utah 2005).

- b. Hansen and Day had misused L.M.'s \$75,000 investment under the initial contract. The funds were not used to cover the cost of a \$30,000,000 loan. Instead, they had been used for other purposes, including personal expenses; and
- c. Some or all of the information typically provided in an offering circular or prospectus regarding Hansen or an investment in CEMA, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. Whether the investment was a registered security or exempt from registration; and
 - iv. Whether Respondents were licensed to sell securities.

**False Statements to the Division under § 61-1-16 of the Act
(Day)**

- 38. The Division incorporates and re-alleges paragraphs 1 through 29.
- 39. On September 21, 2012, in response to a Division inquiry related to its investigation, Day sent a letter to the Division stating that "Day-ly Fresh was a business we had a few years ago. It never received any money from investors. We never had any money in our account from the initial opening of it. No deposits, no business, no profit. We just let it go, as it was not doing any business."
- 40. Pursuant to the contract, signed by Day on behalf of Day-ly Fresh, and dated July 7, 2009, Day entered into an agreement to receive \$75,000 from investor L.M.
- 41. Further, on July 9, 2009, the Day-ly Fresh account at JPMorgan Chase Bank received a

\$75,000 wire payment from investor L.M.

42. Because Day received funds from an investor and deposited those funds into the Day-ly Fresh account at JPMorgan Chase Bank, Day made a false or misleading statement to the Division, in light of the circumstances under which it was made.
43. Additionally, on February 11, 2013, during an interview with the Division, Day stated that investment funds were never used for personal expenses.
44. Based on the source and use analysis of the Day-ly Fresh account (see paragraph 22 above), much of the investment went to cover personal expenses. As a result, Day made a second false or misleading statement to the Division.
45. Based on the above information, Day violated § 61-1-16 of the Act.


ORDER


The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on **Wednesday, May 1, 2013, at 9:00 a.m.**, at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondents

may show cause, if any they have:

- a. Why Respondents should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-1 and 61-1-3, or any other section of the Act; and
- c. Why Respondents should not be ordered to pay to the Division a fine amount to be determined by the Utah Securities Commission after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investor.

DATED this 6th day of March, 2013.


KEITH WOODWELL
Director, Utah Division of Securities



Approved:



D. SCOTT DAVIS
Assistant Attorney General
M.E.



D.H.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
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Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF: KENNETH E. DAY, MICHAEL J. HANSEN, and CEMAGROUP, LLC, Respondents.	NOTICE OF AGENCY ACTION Docket No. <u>SD-13-0021</u> Docket No. <u>SD-13-0022</u> Docket No. <u>SD-13-0023</u>
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THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. See Utah Code Ann. § 63G-4-201 and 63G-4-204 through -209; see also Utah Admin. Code R151-4-101, *et seq.* The facts on which this action is based are set forth in the accompanying Order to Show Cause. The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-4-110.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your

response must include the file number and name of the adjudicative proceeding, your version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Order to Show Cause, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk
c/o Julie Price
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

D. Scott Davis
Assistant Attorney General
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0358

An initial hearing in this matter is set for **Wednesday, May 1, 2013** at the Division of


Securities, 2nd Floor, 160 E. 300 S., Salt Lake City, Utah, at **9:00 A.M.** The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-4-710(2). After issuing the default order, the presiding officer may grant the relief sought against you in the Order to Show Cause, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be Jennie Jonsson, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6706. This adjudicative proceeding will be heard by Ms. Jonsson and the Utah Securities Commission. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause should be directed to D. Scott Davis, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0358.

Dated this 6th day of March, 2013


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 6 day of March, 2013, I mailed, by regular and certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

MICHAEL HANSEN
CEMAGROUP, LLC
463 E. PERRINE DR.
MIDVALE, UT 84047

Certified Mail # 70070220000100642524

KENNETH DAY
11617 COPPER ROSE WAY
SOUTH JORDAN, UT 84095

Certified Mail # 70070220000100642531



Executive Secretary